HIGH COURT OF UTTARANCHAL AT- NAINITAL.

Writ Petition No. 1630(S/S)2004

Pan Singh Jeena S/o Sri Ram Singh Jeena,
Joint Block Development Officer, Ramgarh,
Tehsil and District Nainital. ....Petitioner.

Vs.

1. State of Uttaranchal through Secretary,
   Village Development & Panchayati Raj,
   Secretariat, Dehradun,
2. Departmental Promotion Committee,
   Through Secretary, Village Development
   & Panchayati Raj, State of Uttaranchal,
   Dehradun,
3. Commissioner, Village Development & Panchayat Raj,
   Uttaranchal, Pauri, District Pauri Garhwal,
4. Sri Deoki Nandan Kandpal,
   Block Development Officer,
   Pithoragarh, Distt. Pithoragarh. .....Respondents.

Sri C.D. Bahuguna, learned counsel for the petitioner.
Learned Standing Counsel for the respondents.

Hon'ble M.M. Ghildiyal, J.:

Heard Sri C.D. Bahuguna, learned counsel for the petitioner and learned Standing Counsel for the State who has accepted notices on behalf of the respondent nos. 1 to 3.

By means of this writ petition, the petitioner has prayed to issue a writ, order or direction in the nature of mandamus commanding the respondent nos. 1 to 3 to consider the candidature of the petitioner for promotion to the post of Block Development Offficer with effect from the date when any person junior to the petitioners has been promoted to the post of Block Development Officer with all consequential benefit of service.

Submission of the petitioner is that he was appointed on the post of Village Development Officer in the year 1972 and was confirmed on the said post on 01.07.1987. On 01.05.1998, the petitioner was promoted to the post of Assistant Development Officer and was further promoted to the post of

Joint Block Development Officer on 25.01.2002. On 27.02.2002, the District Development Officer, Nainital directed the petitioner to hold charge of the post of Block Development Officer and since then the petitioner is performing duties of Block Development Officer as assigned to him. On 08.03.2003, a seniority list pertaining to the Block Development Officers was issued in which the petitioner was placed above the respondent no.4, though the petitioner was senior to respondent no.4.The Secretary, Department of Village Development issued a list promoting as many as 28 Joint Block Development Officers to the post of Block Development Officer. It has been further contended that vide aforesaid promotion list juniors to the petitioners have been promoted and the petitioner has been denied for promotion. Lateron, it came to know that the petitioner was denied promotion on account of the character roll entries of the petitioner, which was required by the Department from the District Development Officer, prior making promotion by the Department, was not sent timely to the Department. There was no fault on the part of the petitioner consequently, the petitioner filed representation on 13.12.2004 in the office of the Secretary, Village Development, Uttaranchal, Dehradun. When no heed was paid by the Department and the petitioner was going to be retired on 31.12.2004 he ultimately, on 28th 2004, filed the present writ petition.

On 29.12.2004, this Court, while directing the respondents to file counter affidavit within a period of six weeks, has further directed the respondent no. 1 to decide the representation of the petitioner within a period of three weeks. When the representation of the petitioner was not decided in compliance of the Court's order, the petitioner moved Contempt Petition no. 136 of 2005 in which the respondents have filed counter affidavit. In para-4 of the counter affidavit filed in the

Contempt Petition, the respondents have stated that after receipt of the order of Hon'ble Court in the 1st week of March 2005, the representation of the petitioner was decided by the deponent vide its order dated 26th April 2005. In the order dated 26th April 2005, the Secretary Ministry of Village Development and Panchayati Raj, Dehradun has mentioned that the promotion could not be provided because there was no recommendation of Selection Committee in respect of the petitioner as the character roll entries of the petitioner were not available before the Selection Committee. It has been further stated in the aforesaid order that after receipt of the character roll entries pertaining to the petitioner, the same shall be placed before the Selection Committee and as soon as the recommendation of Selection Committee will be received further action shall be taken for providing promotion to the petitioner. In para-4 of the counter affidavit it has been further stated that all the relevant entries alongwith personal file of the petitioner was called for from the department concerned for considering the claim of the petitioner for his eligibility and for promotion w.e.f. 20.10.2004, when the similarly situated other Joint Block Development Officers were promoted to the post of Block Development Officer. In para-5 of the counter affidavit it has been stated that after receiving the relevant personal file and entries of the petitioner, he was found eligible for promotion form the post of Joint Block Development Officer to the post of Block Development Officer alongwith the similarly situated other Joint Block Development Officers who were promoted w.e.f. 20.10.2004 and consequently the order has been passed by the Secretary, Village Development Panchayati Raj, State of Uttaranchal, Dehradun on 2nd June 2005 granting notional promotion to the petitioner to the post of Block Development Officer. However, in the order dated 2nd June

2005 it is stated that as the notional promotion has been granted to the petitioner, hence he is not entitled for the salary and other allowances from the period when he was granted notional promotion i.e. from 20.10.2004 till he retired from services i.e. on 31.12.2004.

The condition imposed by the aforesaid order is absolutely illegal. Once a person has been granted notional promotion, he is entitled to get all the consequential benefits. The word **'Notional'** means **'existing in imagination only.'** Since the petitioner has been retired, hence only notional promotion can be granted but it does not mean that he will not be entitled for the salary for the post on which he has been granted notional promotion.

The order of the respondent no. 1 dated 2nd June 2005 to this extent that the petitioner shall not get salary and other allowances for the period when he was granted notional promotion on the post of Block Development Officer i.e. 20.10.2004 till the date when he retired from the services i.e. 31.12.2004, is absolutely illegal and is liable to be quashed.

Accordingly, the writ petition is allowed. The respondents are directed to pay salary to the petitioner for the period when he was granted notional promotion on the post of Block Development Officer i.e. 20.10.2004 till the date when he retired from the services i.e. 31.12.2004. The petitioner is also entitled for all the consequential benefits. No order as to costs.

(M.M. Ghildiyal, J.)

August 3, 2005:
NCM: